



February 20, 2004

ENGROSSED SENATE BILL No. 161

DIGEST OF SB 161 (Updated February 17, 2004 4:38 pm - DI 77)

Citations Affected: IC 12-15; IC 12-26; IC 27-4; IC 27-8; IC 27-13; IC 35-36; noncode.

Synopsis: Health matters. Eliminates a provision under which a hospital was allowed 180 days to respond to a notice that the hospital was overpaid by the Medicaid program. Makes hospitals subject to the general provision allowing 60 days for a response. Provides that certain Medicaid providers who have been overpaid do not owe the state interest. Provides that a third party who contracts with the division of mental health and addiction (division) may: (1) provide competency restoration services; and (2) initiate a regular commitment proceeding. Requires a defendant committed to the division who subsequently attains competency to be immediately returned to the court for trial unless the provider of restoration services files a petition objecting to the immediate return. Provides that a psychologist or psychiatrist appointed in a competency hearing may not be an employee or a contractor at a state institution. Prohibits certain provisions in health provider reimbursement agreements.

Effective: July 1, 2004.

Miller

(HOUSE SPONSORS — BROWN C, BUELL)

January 6, 2004, read first time and referred to Committee on Health and Provider Services.

January 15, 2004, reported favorably — Do Pass.

January 20, 2004, read second time, ordered engrossed.

January 21, 2004, engrossed.

January 26, 2004, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 4, 2004, read first time and referred to Committee on Public Health.

February 19, 2004, amended, reported — Do Pass; recommitted to Committee on Ways and Means pursuant to Rule 127.

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ES 161—LS 6309/DI 104+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 161

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-15-13-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) If the office of the
3 secretary believes that an overpayment to a provider has occurred, the
4 office of the secretary may do the following:

5 (1) Notify the provider in writing that the office of the secretary
6 believes that an overpayment has occurred.

7 (2) Request in the notice that the provider repay the amount of the
8 alleged overpayment, including interest, **in accordance with this**
9 **section**, from the date of overpayment.

10 (b) ~~Except as provided in subsection (c)~~; A provider who receives
11 a notice and request for repayment under subsection (a) may elect to do
12 one (1) of the following:

13 (1) Repay the amount of the overpayment not later than sixty (60)
14 days after receiving notice from the office of the secretary,
15 including interest, **in accordance with this section**, from the date
16 of overpayment.

17 (2) Request a hearing and repay the amount of the alleged

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overpayment not later than sixty (60) days after receiving notice from the office of the secretary.

(3) Request a hearing not later than sixty (60) days after receiving notice from the office of the secretary and not repay the alleged overpayment, except as provided in subsection (d).

(c) If:

(1) a provider elects to proceed under subsection (b)(2); and

(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider does not owe the money that the office of the secretary believed the provider owed;

the office of the secretary shall return the amount of the alleged overpayment and interest paid and pay the provider interest on the money from the date of the provider's repayment.

(d) If:

(1) a provider elects to proceed under subsection (b)(3); and

(2) the office of the secretary determines after the hearing and any subsequent appeal that the provider owes the money;

the provider shall pay the amount of the overpayment, including interest, **in accordance with this section**, from the date of the overpayment.

~~(e) A hospital licensed under IC 16-21 that receives a notice and request for repayment under subsection (a) has one hundred eighty (180) days to elect one (1) of the actions under subsection (b)(1), (b)(2), or (b)(3):~~

~~(f) (e)~~ Interest that is due under this section shall be paid at a rate that is determined by the commissioner of the department of state revenue under IC 6-8.1-10-1(c) as follows:

(1) Interest due from a provider to the state shall be paid at the rate set by the commissioner for interest payments from the department of state revenue to a taxpayer.

(2) Interest due from the state to a provider shall be paid at the rate set by the commissioner for interest payments from the department of state revenue to a taxpayer.

(f) Interest is due under this section only when the overpayment is the result of the provider violating a federal or state statute, rule, or published Medicaid policy.

(g) The office of the secretary may reduce the amount of interest under this section in any of the following circumstances:

(1) There was a significant delay in:

(A) the timely identification of the overpayment by the office; or

(B) the timely response to an appeal filed under

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IC 12-15-13-3(b); and
the provider and the office mutually agree on the reduced
interest amount.

(2) Other compelling circumstances as determined on a case
by case basis by the office.

~~(g)~~ **(h)** Proceedings under this section are subject to IC 4-21.5.

SECTION 2. IC 12-15-21-3 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. The rules adopted
 under section 2 of this chapter must include the following:

(1) Providing for prior review and approval of medical services.

(2) Specifying the method of determining the amount of
 reimbursement for services.

(3) Establishing limitations that are consistent with medical
 necessity concerning the amount, scope, and duration of the
 services and supplies to be provided. The rules may contain
 limitations on services that are more restrictive than allowed
 under a provider's scope of practice (as defined in Indiana law).

(4) Denying payment or instructing the contractor under
 IC 12-15-30 to deny payment to a provider for services provided
 to an individual or claimed to be provided to an individual if the
 office after investigation finds any of the following:

(A) The services claimed cannot be documented by the
 provider.

(B) The claims were made for services or materials determined
 by licensed medical staff of the office as not medically
 reasonable and necessary.

(C) The amount claimed for the services has been or can be
 paid from other sources.

(D) The services claimed were provided to a person other than
 the person in whose name the claim is made.

(E) The services claimed were provided to a person who was
 not eligible for Medicaid.

(F) The claim rises out of an act or practice prohibited by law
 or by rules of the secretary.

(5) Recovering payment or instructing the contractor under
 IC 12-15-30-3 to recover payment from a provider for services
 rendered to an individual or claimed to be rendered to an
 individual if the office after investigation finds any of the
 following:

(A) The services paid for cannot be documented by the
 provider.

(B) The amount paid for such services has been or can be paid

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from other sources.

(C) The services were provided to a person other than the person in whose name the claim was made and paid.

(D) The services paid for were provided to a person who was not eligible for Medicaid.

(E) The paid claim rises out of an act or practice prohibited by law or by rules of the secretary.

(6) Recovering interest **as provided for in IC 12-15-13-3:**

(A) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and

(B) accruing from the date of overpayment;

on amounts paid to a provider that are in excess of the amount subsequently determined to be due the provider as a result of an audit, a reimbursement cost settlement, or a judicial or an administrative proceeding.

(7) Paying interest to providers:

(A) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and

(B) accruing from the date that an overpayment is erroneously recovered by the office until the office restores the overpayment to the provider.

(8) Establishing a system with the following conditions:

(A) Audits may be conducted by the office after service has been provided and before reimbursement for the service has been made.

(B) Reimbursement for services may be denied if an audit conducted under clause (A) concludes that reimbursement should be denied.

(C) Audits may be conducted by the office after service has been provided and after reimbursement has been made.

(D) Reimbursement for services may be recovered if an audit conducted under clause (C) concludes that the money reimbursed should be recovered.

SECTION 3. IC 12-15-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. An agreement under section 2 of this chapter:

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(1) **except as provided in IC 12-15-13-3**, must include a provision for the collection of interest on the amount of the overpayment; and

(2) may include any other provisions agreed to by the administrator and the provider.

SECTION 4. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

(1) A health officer.

(2) A police officer.

(3) A friend of the individual.

(4) A relative of the individual.

(5) The spouse of the individual.

(6) A guardian of the individual.

(7) The superintendent of a facility where the individual is present.

(8) A prosecuting attorney in accordance with IC 35-36-2-4.

(9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 5. IC 27-4-1-4, AS AMENDED BY P.L.178-2003, SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar

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- 1 policies;
- 2 (C) making any misleading representation or any
- 3 misrepresentation as to the financial condition of any insurer,
- 4 or as to the legal reserve system upon which any life insurer
- 5 operates;
- 6 (D) using any name or title of any policy or class of policies
- 7 misrepresenting the true nature thereof; or
- 8 (E) making any misrepresentation to any policyholder insured
- 9 in any company for the purpose of inducing or tending to
- 10 induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the*
- 11 *policyholder's* insurance.
- 12 (2) Making, publishing, disseminating, circulating, or placing
- 13 before the public, or causing, directly or indirectly, to be made,
- 14 published, disseminated, circulated, or placed before the public,
- 15 in a newspaper, magazine, or other publication, or in the form of
- 16 a notice, circular, pamphlet, letter, or poster, or over any radio or
- 17 television station, or in any other way, an advertisement,
- 18 announcement, or statement containing any assertion,
- 19 representation, or statement with respect to any person in the
- 20 conduct of ~~his~~ *the person's* insurance business, which is untrue,
- 21 deceptive, or misleading.
- 22 (3) Making, publishing, disseminating, or circulating, directly or
- 23 indirectly, or aiding, abetting, or encouraging the making,
- 24 publishing, disseminating, or circulating of any oral or written
- 25 statement or any pamphlet, circular, article, or literature which is
- 26 false, or maliciously critical of or derogatory to the financial
- 27 condition of an insurer, and which is calculated to injure any
- 28 person engaged in the business of insurance.
- 29 (4) Entering into any agreement to commit, or individually or by
- 30 a concerted action committing any act of boycott, coercion, or
- 31 intimidation resulting or tending to result in unreasonable
- 32 restraint of, or a monopoly in, the business of insurance.
- 33 (5) Filing with any supervisory or other public official, or making,
- 34 publishing, disseminating, circulating, or delivering to any person,
- 35 or placing before the public, or causing directly or indirectly, to
- 36 be made, published, disseminated, circulated, delivered to any
- 37 person, or placed before the public, any false statement of
- 38 financial condition of an insurer with intent to deceive. Making
- 39 any false entry in any book, report, or statement of any insurer
- 40 with intent to deceive any agent or examiner lawfully appointed
- 41 to examine into its condition or into any of its affairs, or any
- 42 public official to which such insurer is required by law to report,

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or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine,

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as distinguished from inland marine, insurance; or
 (iii) policies or contracts of any other kind or kinds of
 insurance whatsoever.

However, nothing contained in clause (C) shall be construed to
 apply to any of the kinds of insurance referred to in clauses (A)
 and (B) nor to reinsurance in relation to such kinds of insurance.
 Nothing in clause (A), (B), or (C) shall be construed as making or
 permitting any excessive, inadequate, or unfairly discriminatory
 charge or rate or any charge or rate determined by the department
 or commissioner to meet the requirements of any other insurance
 rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly
 permitting or offering to make or making any contract or policy
 of insurance of any kind or kinds whatsoever, including but not in
 limitation, life annuities, or agreement as to such contract or
 policy other than as plainly expressed in such contract or policy
 issued thereon, or paying or allowing, or giving or offering to pay,
 allow, or give, directly or indirectly, as inducement to such
 insurance, or annuity, any rebate of premiums payable on the
 contract, or any special favor or advantage in the dividends,
 savings, or other benefits thereon, or any valuable consideration
 or inducement whatever not specified in the contract or policy; or
 giving, or selling, or purchasing or offering to give, sell, or
 purchase as inducement to such insurance or annuity or in
 connection therewith, any stocks, bonds, or other securities of any
 insurance company or other corporation, association, limited
 liability company, or partnership, or any dividends, savings, or
 profits accrued thereon, or anything of value whatsoever not
 specified in the contract. Nothing in this subdivision and
 subdivision (7) shall be construed as including within the
 definition of discrimination or rebates any of the following
 practices:

(A) Paying bonuses to policyholders or otherwise abating their
 premiums in whole or in part out of surplus accumulated from
 nonparticipating insurance, so long as any such bonuses or
 abatement of premiums are fair and equitable to policyholders
 and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the
 industrial debit plan, making allowance to policyholders who
 have continuously for a specified period made premium
 payments directly to an office of the insurer in an amount
 which fairly represents the saving in collection expense.

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(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or ~~agent~~ *insurance producer* thereof duly licensed as such under the laws of ~~this state~~ **Indiana** of money, commission, or brokerage, or giving or allowing by an insurer or such licensed ~~agent~~ *insurance producer* thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, ~~agent~~, ~~an insurance producer~~, or a solicitor duly licensed under the laws of this state, but such broker, ~~agent~~, *insurance producer*, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ *producer* or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~its or his~~ *the lender's* right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ *insurance producers* or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

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(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, ~~agent~~, *insurance producer*, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of ~~his, her, or its~~ the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made

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under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) *Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.*

~~(25)~~ **(26)** *Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.*

~~(25)~~ **(27)** *Violating IC 27-2-21 concerning use of credit information.*

(28) Violating IC 27-8-11-7 or IC 27-13-15-4 concerning provider reimbursement.

SECTION 6. IC 27-8-11-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7. (a) An agreement between an insurer and a provider under this chapter may not contain a provision that**

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1 requires the provider to offer to the insurer a reimbursement rate
2 that is equal to or lower than the lowest reimbursement rate that
3 the provider offers to another insurer.

4 (b) A violation of this section by an insurer is an unfair or
5 deceptive act or practice in the business of insurance under
6 IC 27-4-1-4.

7 SECTION 7. IC 27-13-15-4 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2004]: Sec. 4. (a) A contract between a health maintenance
10 organization and a participating provider may not contain a
11 provision that requires the participating provider to offer to the
12 health maintenance organization a reimbursement rate that is
13 equal to or lower than the lowest reimbursement rate that the
14 participating provider offers to another health maintenance
15 organization.

16 (b) A violation of this section by a health maintenance
17 organization is an unfair or deceptive act or practice in the
18 business of insurance under IC 27-4-1-4.

19 SECTION 8. IC 35-36-3-1, AS AMENDED BY P.L.215-2001,
20 SECTION 109, IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final
22 submission of any criminal case to the court or the jury trying the case,
23 the court has reasonable grounds for believing that the defendant lacks
24 the ability to understand the proceedings and assist in the preparation
25 of his a defense, the court shall immediately fix a time for a hearing to
26 determine whether the defendant has that ability. The court shall
27 appoint two (2) or three (3) competent, disinterested:

28 (1) psychiatrists; or

29 (2) psychologists endorsed by the Indiana state board of
30 examiners in psychology as health service providers in
31 psychology. ~~or physicians;~~

32 At least one (1) of ~~whom~~ the individuals appointed under this
33 subsection must be a psychiatrist. ~~who~~ However, none may be an
34 employee or a contractor of a state institution (as defined in
35 IC 12-7-2-184). The individuals who are appointed shall examine
36 the defendant and testify at the hearing as to whether the defendant can
37 understand the proceedings and assist in the preparation of the
38 defendant's defense.

39 (b) At the hearing, other evidence relevant to whether the defendant
40 has the ability to understand the proceedings and assist in the
41 preparation of the defendant's defense may be introduced. If the court
42 finds that the defendant has the ability to understand the proceedings

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and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:**

- (1) location where the defendant currently resides; or**
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.**

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 9. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense: ~~the division of mental health and addiction; through~~

- (1) the superintendent of the appropriate psychiatric state institution (as defined by IC 12-7-2-184); or**
- (2) the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party;**

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 10. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a)** Within ninety (90) days after:

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(1) a defendant's ~~admittance to a psychiatric institution, the~~
~~superintendent of the psychiatric institution~~ admission to a state
institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a
defendant by a third party contractor;

the superintendent of the state institution (as defined in
IC 12-7-2-184) or the director or medical director of the third
party contractor, if the division of mental health and addiction has
entered into a contract for the provision of competency restoration
services by a third party, shall certify to the proper court whether the
defendant has a substantial probability of attaining the ability to
understand the proceedings and assist in the preparation of the
defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental~~
~~health and addiction state institution (as defined in IC 12-7-2-184)~~
or the third party contractor shall initiate regular commitment
proceedings under IC 12-26. If a substantial probability does exist, the
~~division of mental health and addiction state institution (as defined~~
in IC 12-7-2-184) or third party contractor shall retain the
defendant:

(1) until the defendant attains the ability to understand the
proceedings and assist in the preparation of the defendant's
defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ admission to a state institution
(as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third
party contractor;

whichever first occurs.

SECTION 11. IC 35-36-3-4, AS AMENDED BY P.L.215-2001,
SECTION 112, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found
under section 3 of this chapter to have had a substantial probability of
attaining the ability to understand the proceedings and assist in the
preparation of the defendant's defense has not attained that ability
within six (6) months after the date of the:

(1) defendant's ~~admittance to a psychiatric institution, the division~~
~~of mental health and addiction~~ admission to a state institution
(as defined in IC 12-7-2-184); or

(2) initiation of competency restoration services by a third
party contractor;

the state institution (as defined in IC 12-7-2-184) or the third party

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1 contractor, if the division of mental health and addiction has
2 entered into a contract for the provision of competency restoration
3 services by a third party, shall institute regular commitment
4 proceedings under IC 12-26.

5 SECTION 12. [EFFECTIVE JULY 1, 2004] (a) IC 27-8-11-7, as
6 added by this act, applies to an agreement between an insurer and
7 a provider that is entered into, amended, or renewed after June 30,
8 2004.

9 (b) IC 27-13-15-4, as added by this act, applies to a contract
10 between a health maintenance organization and a participating
11 provider that is entered into, amended, or renewed after June 30,
12 2004.

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COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 161, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 161 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 161, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Page 1, line 8, after "interest" insert ", **in accordance with this section,**".

Page 1, line 15, after "interest" insert ", **in accordance with this section,**".

Page 2, line 18, after "interest" insert ", **in accordance with this section,**".

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"(f) Interest is due under this section only when the overpayment is the result of the provider violating a federal or state statute, rule, or published Medicaid policy.

(g) The office of the secretary may reduce the amount of interest under this section in any of the following circumstances:

(1) There was a significant delay in:

(A) the timely identification of the overpayment by the office; or

(B) the timely response to an appeal filed under IC 12-15-13-3(b); and

the provider and the office mutually agree on the reduced interest amount.

(2) Other compelling circumstances as determined on a case by case basis by the office."

Page 2, line 32, delete "(f)" and insert "**(h)**".

Page 2, after line 32, begin a new paragraph and insert:

"SECTION 2. IC 12-15-21-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. The rules adopted under section 2 of this chapter must include the following:

(1) Providing for prior review and approval of medical services.

(2) Specifying the method of determining the amount of reimbursement for services.

(3) Establishing limitations that are consistent with medical necessity concerning the amount, scope, and duration of the services and supplies to be provided. The rules may contain limitations on services that are more restrictive than allowed under a provider's scope of practice (as defined in Indiana law).

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(4) Denying payment or instructing the contractor under IC 12-15-30 to deny payment to a provider for services provided to an individual or claimed to be provided to an individual if the office after investigation finds any of the following:

- (A) The services claimed cannot be documented by the provider.
- (B) The claims were made for services or materials determined by licensed medical staff of the office as not medically reasonable and necessary.
- (C) The amount claimed for the services has been or can be paid from other sources.
- (D) The services claimed were provided to a person other than the person in whose name the claim is made.
- (E) The services claimed were provided to a person who was not eligible for Medicaid.
- (F) The claim rises out of an act or practice prohibited by law or by rules of the secretary.

(5) Recovering payment or instructing the contractor under IC 12-15-30-3 to recover payment from a provider for services rendered to an individual or claimed to be rendered to an individual if the office after investigation finds any of the following:

- (A) The services paid for cannot be documented by the provider.
- (B) The amount paid for such services has been or can be paid from other sources.
- (C) The services were provided to a person other than the person in whose name the claim was made and paid.
- (D) The services paid for were provided to a person who was not eligible for Medicaid.
- (E) The paid claim rises out of an act or practice prohibited by law or by rules of the secretary.

(6) Recovering interest **as provided for in IC 12-15-13-3:**

- (A) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and
- (B) accruing from the date of overpayment;

on amounts paid to a provider that are in excess of the amount subsequently determined to be due the provider as a result of an audit, a reimbursement cost settlement, or a judicial or an

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administrative proceeding.

(7) Paying interest to providers:

(A) at a rate that is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report; and

(B) accruing from the date that an overpayment is erroneously recovered by the office until the office restores the overpayment to the provider.

(8) Establishing a system with the following conditions:

(A) Audits may be conducted by the office after service has been provided and before reimbursement for the service has been made.

(B) Reimbursement for services may be denied if an audit conducted under clause (A) concludes that reimbursement should be denied.

(C) Audits may be conducted by the office after service has been provided and after reimbursement has been made.

(D) Reimbursement for services may be recovered if an audit conducted under clause (C) concludes that the money reimbursed should be recovered.

SECTION 3. IC 12-15-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. An agreement under section 2 of this chapter:

(1) **except as provided in IC 12-15-13-3**, must include a provision for the collection of interest on the amount of the overpayment; and

(2) may include any other provisions agreed to by the administrator and the provider.

SECTION 4. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply to the commitment of an individual if the individual has previously been committed under IC 12-26-6.

(b) A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition by any of the following:

(1) A health officer.

(2) A police officer.

(3) A friend of the individual.

(4) A relative of the individual.

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- (5) The spouse of the individual.
- (6) A guardian of the individual.
- (7) The superintendent of a facility where the individual is present.
- (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- (9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 5. IC 27-4-1-4, AS AMENDED BY P.L.178-2003, SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

- (1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:
 - (A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;
 - (B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;
 - (C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
 - (D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or
 - (E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the policyholder's* insurance.
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement,

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announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of ~~his~~ *the person's* insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the

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nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay,

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allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or ~~agent~~ *insurance producer* thereof duly licensed as such under the laws of ~~this state~~ **Indiana** of money, commission, or brokerage, or giving or allowing by an insurer or such licensed ~~agent~~ *insurance producer* thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, ~~agent~~, ~~an~~ *insurance producer*, or a solicitor duly licensed under the laws of this state, but such broker, ~~agent~~, *insurance producer*, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

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(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ *producer* or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~his or~~ *his the lender's* right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ *insurance producers* or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, ~~agent,~~ *insurance producer*, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of ~~his, her, or its~~ *the* right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

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(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

- (i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;
- (ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;
- (iii) insures against baggage loss during the flight to which the ticket relates; or
- (iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or

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physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

~~(25)~~ **(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.**

~~(25)~~ **(27) Violating IC 27-2-21 concerning use of credit information.**

(28) Violating IC 27-8-11-7 or IC 27-13-15-4 concerning provider reimbursement.

SECTION 6. IC 27-8-11-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 7. (a) An agreement between an insurer and a provider under this chapter may not contain a provision that requires the provider to offer to the insurer a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the provider offers to another insurer.**

(b) A violation of this section by an insurer is an unfair or deceptive act or practice in the business of insurance under IC 27-4-1-4.

SECTION 7. IC 27-13-15-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 4. (a) A contract between a health maintenance organization and a participating provider may not contain a provision that requires the participating provider to offer to the health maintenance organization a reimbursement rate that is equal to or lower than the lowest reimbursement rate that the participating provider offers to another health maintenance organization.**

(b) A violation of this section by a health maintenance organization is an unfair or deceptive act or practice in the

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business of insurance under IC 27-4-1-4.

SECTION 8. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of ~~his~~ a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians;~~

At least one (1) of ~~whom~~ **the individuals appointed under this subsection** must be a psychiatrist. ~~who~~ **However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:**

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third

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party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 9. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense: ~~the division of mental health and addiction; through~~

(1) the superintendent of the appropriate psychiatric state institution (as defined by IC 12-7-2-184); or

(2) the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 10. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. **(a)** Within ninety (90) days after:

(1) a defendant's admittance to a psychiatric institution; the superintendent of the psychiatric institution admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, ~~the division of mental health and addiction state institution (as defined in IC 12-7-2-184)~~ **or the third party contractor** shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the

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division of mental health and addiction state institution (as defined in IC 12-7-2-184) or third party contractor shall retain the defendant:

- (1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or
- (2) for six (6) months from the date of the:
 - (A) defendant's ~~admittance~~ **admission to a state institution (as defined in IC 12-7-2-184); or**
 - (B) **initiation of competency restoration services by a third party contractor;**

whichever first occurs.

SECTION 11. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

- (1) defendant's ~~admittance to a psychiatric institution; the division of mental health and addiction~~ **admission to a state institution (as defined in IC 12-7-2-184); or**
- (2) **initiation of competency restoration services by a third party contractor;**

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26.

SECTION 12. [EFFECTIVE JULY 1, 2004] (a) IC 27-8-11-7, as added by this act, applies to an agreement between an insurer and a provider that is entered into, amended, or renewed after June 30, 2004.

(b) IC 27-13-15-4, as added by this act, applies to a contract between a health maintenance organization and a participating provider that is entered into, amended, or renewed after June 30, 2004."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 161 as printed January 16, 2004.)

BROWN C, Chair

Committee Vote: yeas 10, nays 2.

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